

Senate Bill 128

My name is Mary Capdeville. I am an Assistant Attorney General with the Montana Department of Justice Natural Resource Damage Program. I am here on behalf of the Department of Justice as a proponent of Senate Bill 128.

My department, along with Fish, Wildlife, and Parks, has been negotiating with the Atlantic Richfield Company, commonly called ARCO, to reach a settlement which will allow Fish, Wildlife, and Parks and ARCO to each meet wetland obligations required in a 1999 consent decree. As part of these negotiations, ARCO has offered the State substantial water rights for use for instream flow in Warm Springs Creek and other nearby tributaries that are part of the Upper Clark Fork Basin. Those water rights are critical to the survival of fish in Warm Springs Creek.

Limiting an ARCO transfer to a lease, as allowed by present law, would significantly limit the value of these rights to the State of Montana, as well as notably limiting the effectiveness of the water right on the fishery. The water rights would be limited by time and would also require the continual acquiesces of the lessor, in a situation where the lessor wishes to transfer the rights.

The Upper Clark Fork Basin is closed to new appropriation. ARCO owns further Upper Clark Fork water rights which could significantly contribute to restoration of the damaged Clark Fork River. Should ARCO transfer a portion of these rights as part of a future Montana v. ARCO settlement, maintaining the lease only option, as opposed to permanent dedication of instream flow, would greatly diminish the value of these water rights to the State of Montana.

These are two limited but critical instances of the necessity of permanent dedication of water to instream flow. The Department of Justice urges your support in the passage of SB 128.